



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region IX
75 Hawthorne St
San Francisco, CA 94105

SEP 26 2019

ENFORCEMENT AND COMPLIANCE
ASSURANCE DIVISION

Via Certified Mail No. 7018 0680 0000 3319 8734

Keith Kihara
Chief, Enforcement and Emergency Response Division
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street
Sacramento, California 95812

Re: Resource Conservation and Recovery Act ("RCRA")
Referral for Dow Chemical, Pittsburg, CA

Dear Mr. Kihara,

This letter requests that an appropriate enforcement response be implemented by the California Department of Toxic Substances Control (DTSC) against the Dow Chemical Company located at 901 Loveridge Road, Pittsburg, CA with RCRA ID CAD076528678 (Dow Chemical). As you know, our respective offices have had ongoing communications and coordination on this matter, and as we discussed we are formally referring it to DTSC for the reasons outlined below.

Per Section IV of the EPA/California Department of Toxic Substances Control Resource Conservation and Recovery Grant Work Plan (State Fiscal Years 2018-2020): "If EPA makes enforcement referrals to the EERD Division Chief for inspections conducted by EPA, EERD will take appropriate enforcement in consultation with EPA." At the request of DTSC, representatives of EPA Region 9 and EPA's National Enforcement Investigation Center (NEIC) conducted an inspection of the Dow Chemical facility, on April 4-8, 2016. Representatives of DTSC also participated during the inspection.

The purpose of the inspection was to evaluate Dow Chemical for compliance with the Resource Conservation and Recovery Act's (RCRA) hazardous waste management requirements, 42 U.S.C. § 6921-6939, and the implementing regulations; and the California Code of Regulations (CCR), Title 22, Division 4.5 and the California Health and Safety Code (HSC), Division 20. Under Section 3006 of RCRA, 42 U.S.C. § 6926, the violations of the State of California's authorized RCRA hazardous waste management program identified in the attached report are federally enforceable. Specifically, DTSC requested that EPA investigate matters related to Dow's RCRA-permitted Boiler Industrial Furnace (BIF) units.

Attached with this letter are copies of the December 2016 EPA NEIC investigation report for Dow Chemical, as well as Dow Chemical's response to a Notice of Violation that EPA issued on January 6, 2017. Confidential business information (CBI) have been redacted from both documents. Copies of the unredacted report and response were sent to Teng Andy Yang of DTSC from Dow Chemical.

After analyzing the information provided by Dow Chemical, EPA Region 9 determined that some of the alleged violations are broader in scope and are not federally enforceable. There is one permit-related violation that is federally enforceable (violation 7), however, this was a one-time violation and EPA Region 9 exercised enforcement discretion and did not pursue this with formal enforcement. The attached Issue Paper for Dow Chemical further characterizes the alleged violations.

If you have any questions, please contact me or have your staff contact Rick Sakow of my staff at (415) 972-3495.

Sincerely,



Kaoru Morimoto, Manager
Hazardous Waste and Chemical Section
Enforcement and Compliance Assurance Division

Attachments:

- 1) Issue Paper for Dow Chemical
- 2) EPA NEIC Investigation Report for Dow Chemical (CBI redacted)
- 3) Dow Chemical response (CBI redacted)

cc: (with attachments)

Ms. Maria Soria
Environmental Program Manager I (Supervisory)
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